Supreme Court of the United States.

No. 160.—October Term, 1904.

Greer County, Oklahoma Territory, Plaintiff in Error, *vs.* The State of Texas. } In error to the Court of Civil Appeals for the Third Supreme Judicial District of the State of Texas.

[March 20, 1905.]

Mr. Justice Holmes delivered the opinion of the Court.

This is a suit brought by the State of Texas to recover certain lands in Hockley and Cochran Counties, Texas, for which patents were issued to Greer County, Texas, on July 18, 1887, under color of the general laws of the State granting four leagues of land to each county of the State for school purposes. Texas Gen. Laws, 1883, c. 55. Greer County, Texas, was created by an act of February 8, 1860, and was organized as a county in 1886. In March, 1896, it was decided by this court that the territory known as Greer County belonged to the United States and not to the State of Texas. *United States* v. *Texas*, 162 U. S. 1. Thereupon by act of Congress of May 4, 1896, c. 155, the same territory was organized as Greer County, Oklahoma, the present defendant, plaintiff in error. 29 Stat. 113. On April 13, 1897, Texas passed a law purporting to set aside the land in controversy for the support of schools in Texas and directing proceedings to recover the land against all adverse claims. Gen. Laws, 1897, c. 72. Then this suit was brought. The defendant, among other things, set up that the State was attempting to impair the obligation of its grant.

The case was heard on agreed facts and the State District Court decided in favor of the State on the ground that the general laws of Texas authorized patents to be issued to the counties of Texas only, and that therefore the patents were void. Another suit was brought against a purchaser from the *de facto* Texas county of a part of the land, in which the Supreme Court of the State decided that the purchaser got a good title, holding that the action of the State Legislature still was conclusive on the Court notwithstanding the decision in *United States* v. *Texas*. *Cameron* v. *State*, 95 Texas, 545. The present cause was taken to the Court of Civil Appeals, which distinguished *Cameron* v. *State*, and affirmed the judgment on the different ground that the grant was for public school purposes within the State of Texas, and, as the defendant could not and would not use the land for such purposes, the State was entitled to have the

patents cancelled and to recover the land. 31 Texas Civ. App., 223. Then a writ of error was obtained from this Court to enforce the constitutional right alleged by the defendant as stated above.

The decision below and in *Cameron* v. *Texas* suggest interesting questions, which it is not necessary to answer. It may be doubted how far any court can be bound by legislation after this Court has declared such legislation beyond the power of the State, any more than it would be if the law had been held unconstitutional. It would be curious to consider whether the mutual mistake in a matter which, on the face of the transaction, obviously went to the root of the gift was of such a nature as to warrant an avoidance when the mistake was discovered, including the question whether the mistake was one of law or fact. See *Bispham* v. *Price*, 15 How. 162, 170, 171; *Upton* v. *Tribilcock*, 91 U. S. 44; *Snell* v. *Insurance Co.*, 98 U. S. 85, 90–92; *Griswold* v. *Hazard*, 141 U. S. 260, 284; *Hirschfield* v. *London, Brighton & South Coast Ry.*, 2 Q. B. D. 1. There is the further consideration whether the gift created a public charity, as contended by the plaintiff in error, and if so, or whatever the nature of the trust, whether there is such a failure of the donee as to invalidate the gift and to destroy the legal title of the defendant, if otherwise good. See *Stratton* v. *Physio-Medical College*, 149 Mass. 505, 508, and cases cited.

We shall consider none of these questions, because we are of opinion that the plaintiff in error must fail on the short ground that it is a stranger to the gift. The plaintiff in error treats the change brought about by the decision in 162 U. S. 1, as if it had been a cession of territory or mere transfer of sovereignty by that or other means. It was nothing of the sort. It was a discovery that the State of Texas never had had a title to the land known as Greer County. The United States found itself at liberty to do what it chose with that land. It could have done nothing. It could have subdivided it at will. It could have made it part of some existing county. The land and its inhabitants retained no legal personality, least of all that personality with which Texas had purported to endow them. The United States, it is true, very properly did what it could to preserve the former condition of things. By § 1 of the Act of May, 1896, c. 155, 29 Stat. 113, it provided that "all public buildings and property of every description heretofore belonging to Greer County, Texas, or used in the administration of the public business thereof is hereby declared to be the property of said Greer County, Oklahoma," and otherwise it did all in its power to keep up the legal continuity of the county with the supposed old one. But some things were not within its power, and one thing which it could not do was to make an artificial creation of its own successor to the title to lands in Texas, supposing that title to have been parted with, by its independent fiat. Without the consent of Texas no corporation created by another sovereignty could succeed to Texas lands.

Greer County, Oklahoma, being a corporation created by a different sovereignty from that which purported to create Greer County, Texas, is technically a different person. It can claim the legal title, which Texas purported to convey to a creation of its own, only by succession, or that feigned identity familiar in the cases of executor and heir. See *Day* v. *Worcester, Nashua & Rochester R. R.*, 151 Mass. 302, 307, 308; Littleton, § 337; *North* v. *Butts*, Dyer, 139*b*, 140*a*; *Oates* v. *Frith*, Hob. 130. But succession to land is governed wholly by the law of the place where the land lies. *De Vaughn* v. *Hutchinson*, 165 U. S. 566, 570. The land in controversy was no part of Greer County, but lies in Texas, and Texas, so far from having assented to the succession of the defendant, has assumed to deal with the land as its own, by legislation, and has directed this suit to be brought to recover it. The legal title of the State is clear, for on the disappearance of the *de facto* county the State took whatever title that county had. See *Meriwether* v. *Garrett*, 102 U. S. 472. The legal title is what is in question before us, and the actual continuity of the inhabitants of the county could be recognized only by way of trust. But it would be wrong to encourage the notion that the title still may be charged with a trust in favor of schools in Greer County. The aim of the statute, under which the patents were made out, was the support of Texas schools. That was its dominant purpose. We think it unlikely that any Court of Equity would deem it equitable to direct the fund to any other trust.

Judgment affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.

END OF CASE